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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 INTELLECTUAL VENTURES II LLC,

4 Plaintiff,

5 v.

13 Civ. 3777 (AKH)

6 JP MORGAN CHASE & CO.,

7 Defendant.

8 -----x
9 March 5, 2014
10 10:15 a.m.

11 Before:

12 HON. ALVIN K. HELLERSTEIN

13 District Judge

14 APPEARANCES

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(In open court)

THE COURT: Good morning. Be seated. Intellectual Ventures. You're Mr. Lim?

MR. LIM: Yes, your Honor.

THE COURT: Introduce your colleagues, please.

MR. LIM: Sure. Your Honor, my name is Sal Lim with Feinberg Day Alberti & Thompson. With me is David Alberti and Jake Zolotorev of Feinberg Day Alberti & Thompson. And Dunnegan is our local counsel. And with us are our clients, Melissa Finocchio and Cris Leffler. And also with us is our technician that is going to be helping us with the presentation.

THE COURT: Most valuable person here. And his name is?

MR. LIM: Michael --

MR. SKRZYPEK: -- Skrzypek.

THE COURT: Good morning, all.

MR. NAGY: Your Honor, Tibor Nagy with Dontzin Nagy here for defendants.

THE COURT: How do you spell your name, Mr. Nagy?

MR. NAGY: N-a-g-y, your Honor. And with me from Durie Tangri is Clem Roberts, and from Kirkland & Ellis, Mr. Adamo, Ken Adamo, and Brent Ray. Our client is here as well, Michael Pearce. And we too have a technology assistant with us, Scott Watson.

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1 THE COURT: Mr. Pearce, if you wear a jacket, you can
2 come up to counsel table.

3 MR. PEARCE: I'm fine here.

4 THE COURT: All right. That's everybody?

5 I have received the Elcommerce.com, Inc. case decided
6 by the Federal Court of Appeals sent to me by Mr. Alberti.
7 I've read it.

8 I think there is a contest going on between the
9 federal Court of Appeals and some of the district courts about
10 how much clarity is required under Section 112. I was reversed
11 in a case called Biosig v. Nautilus in the federal Court of
12 Appeals, and the Supreme Court has granted certiorari. I don't
13 know if it will get up there this term or next term, but I
14 think we'll have some Supreme Court clarification. Whether
15 that's a clarification or further obfuscation will await
16 history, but the Supreme Court will deal with the issue of
17 Section 112 and the scope and reach and command.

18 What I'd like to do, if it makes sense to both of you,
19 is to go down the terms in issue one by one and hear the
20 contentions of interpretation, and see if I could suggest what
21 I believe would be a Markman construction to define the case.
22 We will do this as we go along, and eventually the submission
23 that both of you made jointly -- which I appreciate very
24 much -- with my construction will be the order that will issue
25 in this case.

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1 All right. So, let's begin with the 084 patent. And
2 I think we will have in all these cases have Mr. Lim speak
3 first for Intellectual Ventures and Mr. Nagy second, or members
4 of your respective teams.

5 So, the first term in dispute is what is meant by an
6 anomaly. Intellectual Ventures suggests that the plain meaning
7 is sufficient. JP Morgan Chase suggests that the proper
8 definition would be a "predetermined pattern of data". I would
9 suggest "an unusual or unexpected pattern of data".

10 Comments?

11 MR. LIM: That's fine with us, your Honor.

12 THE COURT: Mr. Nagy?

13 MR. NAGY: Your Honor, "unusual or unexpected" we
14 think could be problematic, and the reason, Judge, is because
15 there are anomalies that are neither. In this particular --

16 THE COURT: Neither unusual or unexpected.

17 MR. NAGY: Exactly, your Honor.

18 THE COURT: How about aberrational, or irregular?

19 MR. NAGY: Same issue, your Honor. And if I might,
20 your Honor --

21 THE COURT: Anomaly is not predetermined.

22 MR. NAGY: Your Honor, if I might on that point, we
23 believe that in this patent it has to be, and the reason it has
24 to be is because the anomalies at issue here are things that
25 you tell the system to look for. Something can't be unusual in

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1 a computer if you don't tell the computer what usual is. It
2 can't be unexpected if you don't tell the computer what
3 expected is.

4 And every single claim in this patent, your Honor, all
5 of them, have one term in common. And if I could, your Honor,
6 can we get slide 9 up, please?

7 Slide 9, your Honor, is claim 1 of the patent. And in
8 blue, Judge, is a phrase that's in every single one of the 33
9 claims at issue here: Detecting an anomaly in the network
10 computer system using network-based intrusion detection
11 techniques comprising, analyzing data.

12 And we put "network-based intrusion detection
13 techniques" in italics for your Honor because those are things
14 that were preexisting. This patent doesn't say it invented
15 those techniques; instead it says use those techniques
16 differently. And it gives the reader examples of those
17 techniques, three examples in the specification.

18 The one commonality to all of those techniques, Judge,
19 is they all use predetermined patterns of data. They have to.
20 Because if you didn't say look for this, the system that's
21 claimed in this patent wouldn't know what to look for. It
22 can't come up with something and say, oh, that looks out of the
23 ordinary.

24 I will give your Honor another example. There is
25 something in this patent called address spoofing. That is one

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1 of the examples that is given of the type of anomaly you would
2 be looking for. But it is neither unexpected, nor unusual, nor
3 an aberration. In fact, the patent, if you would go to the
4 next slide, please, take us to 15.

5 Address spoofing, your Honor is something you expect.
6 The very reason you would use this patent in this system is
7 because you are expecting to get attacks like this, and when
8 you get them they look completely ordinary; there is nothing
9 unusual or aberrational about them.

10 THE COURT: I will define it as an irregularity in the
11 data. That's my tentative ruling, to be reexamined when we
12 complete the whole process. OK? An anomaly does not have to
13 be predetermined. It may arise in many different
14 circumstances, but an anomaly connotes something that is
15 irregular.

16 MR. NAGY: Thank you, your Honor.

17 THE COURT: An irregularity in the data.

18 The second term in controversy is "Network based
19 intrusion detection techniques."

20 Intellectual Ventures suggests "Techniques for
21 detection of intrusions by analysis of events which happen in a
22 communications network to which the detecting device is
23 attached."

24 JP Morgan suggests "Techniques for determining that a
25 breach of computer security has occurred, is underway, or is

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beginning based on analysis of network communications".

My suggestion is "Techniques for detecting by analyzing network communications whether unauthorized computers have entered a network."

"Techniques for detecting by analyzing network communications, whether unauthorized computers have entered a network."

Mr. Lim?

MR. LIM: I think that would be acceptable to us, your Honor.

THE COURT: I'm sorry?

MR. LIM: I think that would be acceptable.

THE COURT: Mr. Nagy?

MR. NAGY: Your Honor, it's largely acceptable except for the last part, and let me show you why.

THE COURT: Just tell me what you'd like.

MR. NAGY: Sure, your Honor. We would like for detection "that a breach of computer security has occurred, is underway, or is beginning".

And the reason, your Honor, is your construction as proposed would eliminate an intrusion attempt, whereas that's clearly contemplated by the specification. When you say "enter," that would exclude an attempt to enter, it would exclude reconnaissance activity, and so we need that broader language.

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1 THE COURT: So we can say "have entered" or "are
2 seeking to enter".

3 MR. NAGY: Again, your Honor, still too limited. It
4 would not include, for example, necessarily reconnaissance
5 activity where you are not trying to enter, you are just doing
6 reconnaissance. And that is right in the specification.

7 And this phrase here, your Honor, that we have "has
8 occurred, is underway or is beginning" --

9 THE COURT: What do you want?

10 MR. NAGY: We would like "A breach of computer
11 security has occurred, is underway, or is beginning".

12 MR. LIM: Your Honor, may I respond to that point?

13 THE COURT: Yes.

14 MR. LIM: Yes. Can I have slide number 7, please.

15 THE COURT: We are going off the record so that we can
16 try to create interchangeability of files for easier display.

17 MR. LIM: Thank you, your Honor.

18 THE COURT: Off the record.

19 (Recess)

20 MR. LIM: May I proceed, your Honor?

21 THE COURT: Go ahead.

22 MR. LIM: Your Honor, the point I was going to make is
23 that with respect to this particular term, I want to draw the
24 court's attention to independent claim number 26, dependent
25 claim 30, as well as 31. As you can see, your Honor, there are

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1 various additional limitations that's added by the dependent
2 claim into the -- that we incorporated into the independent
3 claim through the adding the independent claim limitations to
4 the dependent claim limitations.

5 And with respect to anomaly, as can you see, anomaly
6 comprises use of intrusion, intrusion attempts and
7 reconnaissance activities. I think that's what counsel is
8 getting at.

9 But If you look further down at the additional
10 limitation of 31 includes the detection of data packets with
11 respect to predetermined patterns. So, the dependent claims
12 recites these various activities that are in question.

13 And I think the prior construction provided by your
14 Honor sufficiently covers the term for network based intrusion
15 detection techniques.

16 THE COURT: So, what do you suggest?

17 MR. LIM: It's precisely what your Honor read off to
18 us the first time, your Honor.

19 THE COURT: It's very dangerous to tell me that you
20 agree with me and elaborate, because I could be persuaded
21 against you. If I say something you agree with, just say you
22 agree. You don't need to support my reasoning. Thank you, Mr.
23 Lim.

24 The definition will be the following: "Techniques for
25 detecting by analyzing network communications, whether

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1 unauthorized computers have entered or are seeking to enter a
2 network, or are conducting reconnaissance activities..."

3 MR. NAGY: Thank you, your Honor.

4 THE COURT: The third controversial term is between
5 the claim that says "plurality of hosts, servers and computer
6 sites in the networked computer system".

7 Intellectual Ventures suggests interpretation of terms
8 is not required. JP Morgan suggests "multiple hosts, servers
9 and/or computer sites within a computer network". I will adopt
10 JP Morgan's suggestion.

11 MR. LIM: Your Honor, may I be heard on that point?

12 THE COURT: Yes.

13 MR. LIM: Can I go to slide 14, please.

14 THE COURT: Yes.

15 MR. LIM: Your Honor, as recited in claim 1 and
16 independent claim 26, the precise claim term in question "a
17 plurality of hosts, servers and computer sites," the key word
18 here is the claim language uses the word "and," and Chase is
19 seeking to change the word "and" to an "or". And the reason
20 that would not make sense --

21 THE COURT: It's in the disjunctive, "and" or "or".

22 MR. LIM: It is disjunctive, so it could be broad
23 enough to cover a system where there are two or more computer
24 hosts.

25 THE COURT: You want "hosts, servers and computer

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1 sites" to be in the conjunctive.

2 MR. LIM: Right.

3 THE COURT: Any objection to that, Mr. Nagy?

4 MR. NAGY: I do, your Honor. There are a number of
5 objections. The first is it excludes one of the embodiments
6 that's in the specification itself.

7 Take us, if you would, to our presentation slide 36.

8 THE COURT: Let me see the preview.

9 Let me ask, if it's "and" or "or," you've got breadth
10 more so than in the claim. Why should you object?

11 MR. LIM: I'm sorry, your Honor?

12 THE COURT: If you have "and" or "or," either
13 conjunctive or disjunctive, you've got breadth more so than
14 conjunctive alone. Why should you object?

15 MR. LIM: We respectfully submit that the claims are
16 the narrow scope. In other words, the network based intrusion
17 techniques is talking about multiple hosts, multiple servers
18 and multiple computer sites.

19 THE COURT: I got it.

20 Mr. Nagy, go ahead.

21 MR. NAGY: Thank you, your Honor.

22 Slide 31 of our set, please. No, that's not slide 31.
23 That's slide 31.

24 Your Honor, let me start by showing you where we got
25 our construction. We took it right out of the file history;

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1 it's that underlying language there.

2 Now let me show your Honor why IV's insistence on
3 having an "and" before each one just wouldn't work.

4 Can we go to slide 36, please.

5 THE COURT: I have seen enough. It's going to be
6 "and" or "or".

7 MR. NAGY: Thank you, your Honor.

8 Is there an objection on using multiple rather than
9 plurality?

10 MR. LIM: No objection to that, your Honor. If I may
11 be heard on the and/or on one more point.

12 THE COURT: No, we have enough.

13 Point 4. "Pattern correlations across the plurality
14 of hosts, servers, and computer sites".

15 Intellectual Ventures suggests "recognition of anomaly
16 signatures across the plurality of hosts, servers and computer
17 sites.

18 JP Morgan suggests "a pattern in the data from
19 multiple hosts, servers, and/or computer sites.

20 I suggest "analysis of patterns of data across
21 multiple hosts, servers, and/or computer sites".

22 MR. NAGY: No objection on our end, your Honor.

23 MR. LIM: No objection, your Honor.

24 THE COURT: 5. Alerting the devices/alerts the
25 devices.

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1 Intellectual Ventures argues plain meaning. JP Morgan
2 suggests "notifying the device, an associated firewall, or
3 administrator".

4 Can I see the claim itself?

5 MR. NAGY: Your Honor, just one note there. It's
6 claims 15 and 16 that specifically also include certain of the
7 language. There are 33 claims in the patent, so looking at
8 just claim 1 would not give you the whole picture.

9 THE COURT: All right. Look at claim 1 first and then
10 15 and 16. OK. Now let's look at 15 and 16.

11 MR. NAGY: And that's claim 9 for now. Can we get in
12 15 and 16?

13 THE COURT: 15 is up. And now 16.

14 I'm stopping on this slash between "alerting the
15 devices" and "alerts the devices". I guess you're defining
16 both those terms. Is that what it is?

17 MR. NAGY: Yes, your Honor. They happen to come up
18 with alerting and alerts. That's all.

19 THE COURT: I don't think there needs to be any
20 definition. I think the plain meaning is sufficient.

21 MR. NAGY: Your Honor, may I be heard briefly on that?

22 THE COURT: Yes.

23 MR. NAGY: Your Honor, when we first saw this -- and
24 we can understand why you think the plain meaning might work --
25 but "alerts the devices" is really just not limited to devices.

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1 I might alert your Honor, for example, to an emergency
2 by picking up the phone and calling you, but if you are on
3 trial, maybe that won't work. I might also alert you by
4 calling your wife or calling your secretary. I still would be
5 alerting you. And that's what this patent says.

6 And, your Honor, as you can see on our slide 47 --

7 THE COURT: Before you show it, let me just see the
8 last slide that was shown.

9 MR. NAGY: You can see, your Honor, here --

10 THE COURT: Can you stop talking?

11 MR. NAGY: I'm sorry, Judge.

12 THE COURT: I will adopt JP Morgan's suggestion.

13 MR. NAGY: Thank you, your Honor.

14 MR. LIM: Your Honor, might I be heard on that point?

15 THE COURT: Yes.

16 MR. LIM: The slide you are looking at right now it's
17 dependent claim 16.

18 Can I have the prior slide, please.

19 The prior slide illustrates the fact that the
20 "alerting a firewall associated with a device" -- which is
21 exactly what JP Morgan Chase proposed -- is in a dependent
22 claim 15. So if their construction is adopted, that limitation
23 of the dependent claim 15 is now read into the independent
24 claim 9 through the construction of alerting device.

25 THE COURT: The focus is on alerting. The patent is

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1 dealing with the automated feature of the function of alerting.
2 How the alert takes place, according to my understanding, is
3 not important to the patent construction.

4 MR. LIM: Well, what is being --

5 THE COURT: Am I right?

6 MR. LIM: I'm sorry.

7 THE COURT: Am I right? You're not claiming who was
8 alerted; you're claiming that there is a technique in sensing
9 the anomaly.

10 MR. LIM: That's correct. But, your Honor, the claim
11 makes clear what is being alerted does not include the
12 administrator in this particular claim limitation.

13 Please give me the next slide.

14 The next slide is another dependent claim off of 9,
15 and there the further added limitation of 16 refers to an
16 administrator of the device.

17 THE COURT: I've heard enough. I'm accepting JP
18 Morgan's suggestion.

19 6. Sense data.

20 JP Morgan's suggestion is "detect data traffic or
21 audit trail records".

22 I don't think the term needs interpretation.

23 7.

24 MR. NAGY: Your Honor, may I be heard briefly on that?

25 THE COURT: Yes.

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1 MR. NAGY: That may be fine by us, but we started off
2 here --

3 THE COURT: So if it's fine, don't argue.

4 MR. NAGY: It may be, your Honor.

5 THE COURT: Why don't you think about it before you
6 speak. If it's all right, then let's move on. We don't need
7 to have contentions about every one.

8 MR. NAGY: On second thought, your Honor, I think it's
9 fine.

10 THE COURT: Thank you. Then there are nine terms.
11 There is no 7 here. The proposal has a box for 7 but there is
12 nothing there.

13 So, there are six points of construction that are in
14 contention, and I resolved those six.

15 Now we move on to constructions resolved by agreement.
16 I accept all those.

17 That finishes the 084 patent. We are now on the 409
18 patent. Here is how I introduce the subject:

19 "This patent is a method for limiting access to
20 sensitive data. Sensitive data is encrypted and then sent with
21 rules limiting who can access the data. (The rules can be sent
22 either together with the encryption or separate." Different
23 people may be given different access to data for different
24 purposes.

25 "Plaintiffs and defendants disagree about whether the

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1 patent involves encryption. Plaintiffs argue that "protected
2 data" is encrypted, "unprotected data" is decrypted, and the
3 patent covers what happens to the data after it has been
4 decrypted. Defendants however contends that the data remains
5 encrypted and the patent concerns a method for decrypting the
6 data every time it is accessed."

7 Comments?

8 MR. ROBERTS: So, on behalf of the defendants, your
9 Honor, that's not fully right. First, I think we have
10 agreement that the patent involves encrypting and decrypting
11 data, and that the protected data is encrypted and the
12 unprotected data is decrypted. And I think we actually have
13 agreement between the plaintiffs and the defendants on that
14 subject.

15 THE COURT: Is that true, Mr. Lim or Mr. Alberti?

16 MR. ALBERTI: Yes, your Honor, it is true that we both
17 agree that when we talk about protected and unprotected we are
18 indeed talking about encrypted and unencrypted or decrypted
19 data.

20 THE COURT: All right. So, there is no contention on
21 that issue.

22 So I should say that "the patent provides that
23 protected data is encrypted and that unprotected data is
24 decrypted," and stop there.

25 MR. ROBERTS: I would say that unprotected data is

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1 unencrypted because it may be, your Honor, that unprotected
2 data has not yet been encrypted.

3 THE COURT: I think you're right, I think unencrypted
4 is better.

5 Let me deal with the disputes.

6 First is "openly distributed data".

7 Intellectual Ventures suggests "data transmitted over
8 an insecure communication channel".

9 JP Morgan: "Data transmitted using mechanisms and
10 media which may be subject to access and copying by third
11 parties". I would adopt Intellectual Ventures'.

12 MR. ROBERTS: Thank you, your Honor. If I may --

13 THE COURT: Sorry. Go ahead, Mr. Roberts.

14 MR. ROBERTS: Yes, I was going to comment on that.

15 If I could have our slide 6, please.

16 Slide 6, your Honor, is a passage that everybody looks
17 at.

18 THE COURT: You are Mr. Roberts, right?

19 MR. ROBERTS: Yes, your Honor. It says information
20 can be transmitted openly, that is, using mechanisms and media
21 that are subject to access and copying, in other words,
22 communication channel may be insecure.

23 In our view what the patent requires when it talks
24 about openly distributing data is sending it out into the world
25 openly, without regard to the security status of the method of

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1 communication. It's broadcasting it.

2 You don't need to know for a fact that the
3 communication channel over which you are sending the data is
4 insecure; you are simply distributing it openly to all comers.
5 Some of those people may be secure; some of those people may be
6 insecure.

7 THE COURT: Let's say I take out "insecure". "Openly
8 accessible communications channel".

9 MR. ROBERTS: What we had proposed as a compromise was
10 to combine our two language, your Honor. "Data transmitted
11 over one or more communication channels which may be insecure,
12 (i.e., transmitted using mechanisms and media subject to access
13 and copying by third parties)".

14 And that literally takes the language which is in
15 slide 6 directly. It reverses the order, but it's literally
16 that same language.

17 THE COURT: I will adopt the following: "Data
18 transmitted over an openly accessible communications channel".

19 MR. ALBERTI: We agree, your Honor.

20 THE COURT: 2. Rules defining access rights.

21 Intellectual Ventures suggests "rules corresponding to
22 data for controlling access to the data".

23 JP Morgan: "Permissions governing access".

24 I suggest: "Rules governing who has permission to
25 access the data". Simplify it. "Rules governing who may

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1 access data".

2 MR. ALBERTI: Your Honor, I would suggest a slight
3 modification of that, and I would suggest "rules governing
4 access to the data".

5 The reason I say that is because not all rules relate
6 to a particular individual. There are rules that say, for
7 example, you can only access the data for a certain given
8 period of time, or you can only access the data under certain
9 conditions irregardless of who the actual person is.

10 THE COURT: How about this: "rules governing who, how
11 and when access data".

12 MR. ROBERTS: Actually, if your Honor is attracted to
13 "rules" rather than "permissions," I would be willing to agree
14 to "rules governing access to the data," which is what opposing
15 counsel proposed. We had thought that --

16 THE COURT: OK, let me get it then. "Rules
17 governing" --

18 MR. ROBERTS: -- "access to the data".

19 MR. ALBERTI: We would agree with that, your Honor.

20 THE COURT: Adopted.

21 3. At least one low level effectively defines a
22 virtual machine.

23 Intellectual Ventures suggests that "the parties agree
24 that 'at least one low level' refers to 'a level in a computer
25 system below a high-level application environment'".

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1 JP Morgan suggests the agreement as follows: That "at
2 least one low level refers to a level in a computer system
3 below a high-level application environment".

4 MR. ROBERTS: Your Honor, may I clarify this?

5 THE COURT: Yes.

6 MR. ROBERTS: So the parties agree about what "at
7 least one low level is," i.e., a low level is a level below the
8 application environment.

9 THE COURT: Here is what I would like to do, which I
10 think consolidates both and simplifies it: "a level within a
11 computer system below a high-level application environment".

12 MR. ALBERTI: Your Honor, the issue that we take with
13 that is it never addresses what an actual virtual machine is.

14 That construction does address, and the parties agree,
15 that at least one low level is a level in a computer system
16 below a high-level application environment. However, a virtual
17 machine has a meaning that's one of ordinary skill in the art
18 would understand. It's basically a software-based
19 implementation of a computer, and that is not reflected
20 within --

21 THE COURT: No, it's not, you're right.

22 MR. ROBERTS: And, your Honor --

23 THE COURT: Let's stop a minute. When defining these
24 terms I have to imagine how a jury is going to understand this
25 at the end of the case, if we have to go that way. That's a

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1 fine definition, but a jury will not understand it, so let's
2 get something simpler for virtual machine.

3 I think we are agreed on the first part, "a level
4 within a computer system below a high-level application
5 environment". Let's do the second part.

6 MR. ROBERTS: Can we have slide 24?

7 Your Honor, what slide 24 says -- and this is from the
8 specification -- it says "Typical computer systems are
9 implemented at various levels, each level effectively defining
10 a different virtual machine."

11 What we think that means is that in terms of this
12 patent, each level defines, constitutes, sets the metes and
13 bounds of a different virtual machine. That's what the
14 specification says literally.

15 So, we think that when it says "at least one low level
16 effectively defining a virtual machine," what's important to
17 tell the jury is this is the thing that defines the virtual
18 machine. And the parties agree on what that thing is, and that
19 is why we have proposed our construction. We don't think you
20 need a separate construction for virtual machine.

21 THE COURT: What is a virtual machine?

22 MR. ROBERTS: In this patent a virtual machine is
23 synonymous with a level within the stack of the computer system
24 operating system. It's each level shown in the drawing on the
25 right-hand side of the figure on your screen.

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1 THE COURT: I still don't understand what a virtual
2 machine is.

3 MR. ROBERTS: So, your Honor, if you would like the
4 parties to take the term virtual machine and come become and
5 propose a separate construction of that term, I'd be willing to
6 do that, and we could submit it to you on the briefing.

7 THE COURT: Why don't the two of you talk together
8 right now. We will go off the record.

9 MR. ROBERTS: OK.

10 (Pause)

11 MR. ROBERTS: We have reached an agreement that a
12 virtual machine separately can be defined as a software process
13 that emulates another process or computer.

14 THE COURT: And as I would understand, an example of
15 that is if I have an Apple product and it's configured to run
16 Microsoft, it then appears to be a Microsoft product.

17 MR. ALBERTI: That's a perfect example, actually, yes.

18 THE COURT: OK. So the definition will be "a level
19 within a computer system below a high-level application
20 environment. A virtual machine is a software process that
21 emulates another software process or computer".

22 The next claim term is "means for outputting".

23 Intellectual Ventures suggests "outputting the images
24 represented by the accessed data or outputting the output
25 signal represented by the accessed data".

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1 JP Morgan suggests "outputting the images represented
2 by the accessed data or outputting the output signal
3 represented by the accessed data".

4 MR. ROBERTS: Your Honor, what you just read is -- the
5 parties agree on the function of this term. It's a mean plus
6 function term, and the parties agree on the function. The
7 disagreement is on the structure. They say the structure is a
8 display, monitor or --

9 THE COURT: Well, I think the JP Morgan is a little
10 easier to understand, so I will adopt that. Then we can focus
11 on the structure.

12 MR. ROBERTS: Thank you, your Honor. The structure,
13 they say the structure is a display, monitor or printer. We
14 say it is the IO controller. I will just present my brief
15 argument on it.

16 If we could have slide 32, please.

17 This is the drawing given in the specification that
18 both parties rely on. The line in red, the line 167 defines
19 the boundary for the components of the access mechanism 114.
20 The thing that outputs the data from that boundary is the IO
21 controller shown in yellow. The devices shown to the left --
22 if we can see slide 36, please -- those devices are peripheral
23 devices; they are external devices to the claimed invention.
24 The claims call for a device which outputs data, that's the IO
25 controller, and that data goes to printers, monitors and other

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1 items which then can print or output it in different ways. So,
2 the means for outputting from the device that is the subject of
3 the invention is the IO controller itself.

4 To be fair, there are some embodiments where the
5 claims call for the invention to be embodied within a printer
6 or monitor, but even then the claims cannot be construed as
7 they propose.

8 If we could have, for example, slide 38.

9 THE COURT: I am getting too much information, and I
10 am not focusing. Go back one slide, please.

11 MR. ROBERTS: If you go to slide 36, your Honor, what
12 you will see is --

13 THE COURT: No, go back one more.

14 MR. ROBERTS: One more. 32, please.

15 THE COURT: So, number 165 you say is the controller.

16 MR. ROBERTS: Yes, 165 is the IO controller. And OI
17 stands for input/output.

18 THE COURT: The input/output controller.

19 MR. ROBERTS: And it is therefore the means for
20 outputting; it is the thing that controls outputting, as its
21 name suggests.

22 THE COURT: So the information comes from the left to
23 the right?

24 MR. ROBERTS: The information in this drawing comes
25 from the right, it comes from the access mechanism. It is

E357INT1

1 output via 165, and it flows to the peripheral devices on the
2 left.

3 THE COURT: So I would think that box 165 would be
4 both input and output.

5 MR. ROBERTS: It is. I am not disputing that it also
6 would be -- if there were a means for inputting -- that it
7 would probably be that corresponding structure as well. It may
8 do other things. But it is clearly the mechanism pointed to in
9 the specification for outputting information from the access
10 mechanism 114 surrounded by line 167.

11 THE COURT: All right. So I think your suggestion
12 would translate in function generating an output signal from
13 the access data.

14 MR. ROBERTS: Well, the parties have agreed on the
15 function, your Honor.

16 THE COURT: Yes, I see that. So I should just accept
17 that.

18 MR. ROBERTS: We would appreciate it.

19 THE COURT: All right. And for structure, you say
20 there is no corresponding structure?

21 MR. ROBERTS: We say that the corresponding structure
22 for the means for outputting is the IO controller, because that
23 is what outputs the data from the device.

24 THE COURT: And what does Intellectual Ventures say?

25 MR. ALBERTI: Your Honor, we say you have to key in on

E357INT1

1 what the agreed function is.

2 THE COURT: What do say?

3 MR. ALBERTI: We say it's the display monitor or
4 printer, because the function is outputting images. An IO
5 controller doesn't output images. A monitor -- what I am
6 looking at right now -- a display certainly outputs an image.
7 If an image is on paper, a printer will certainly output an
8 image. An IO controller simply does not output an image. And
9 what is discussed in the patent, the things that actually
10 output images are printers and displays.

11 THE COURT: Well, if the function is generating the
12 output signal from the access data --

13 MR. ROBERTS: You are looking at a different term,
14 your Honor. There are two: There is a means for outputting
15 and a means for generating.

16 THE COURT: I'm sorry. Excuse me.

17 The means for generating, as I understand this
18 diagram -- and the slide is number --

19 MR. NAGY: -- 37, your Honor. And it's figure 8 of
20 the patent.

21 THE COURT: -- is that the different boxes on the
22 right-hand side stimulate potentially a message that passes
23 through the controller, and it's the controller that is the
24 device that generates the informational signal that passes on
25 to the information on the left, of which one is a printer. The

E357INT1

1 printer is reactive. The printer will print that which the
2 controller instructs it to print.

3 So, if we are talking about outputting, which is the
4 means, the appropriate device is the controller and not the
5 display, monitor or printer. I would understand the display,
6 monitor or printer to implement a command generated by the
7 controller.

8 MR. ROBERTS: Your Honor, that cannot be right
9 according to the claim language.

10 Can I please have slide 38.

11 THE COURT: I can't have both of you standing? Who
12 has the floor?

13 MR. ROBERTS: Since you are going in their direction,
14 if I can speak briefly, your Honor.

15 This is the claim. It calls for a device for
16 outputting images. If that device is the printer, then the
17 means for outputting cannot be the printer, because the means
18 for --

19 THE COURT: I just said that. I said it's a
20 controller. I said that the printer or the display is reactive
21 to the information generated by the controller, so the device
22 is the controller. That's what you're suggestion.

23 MR. ROBERTS: That's correct. But the means for
24 generating cannot be that controller. The generating means are
25 the other boxes to the right.

E357INT1

1 THE COURT: Well, they pass through the controller,
2 and the controller --

3 MR. ROBERTS: Correct.

4 THE COURT: So that's why you are using the word
5 outputting. So, it's my mistake, and I created a confusion by
6 using the word generating. "Outputting the images represented
7 by the access data or outputting the output signal represented
8 by the access data," that's the definition that's been agreed
9 to. I accept it. And the structure is the controller.

10 MR. ROBERTS: Thank you, your Honor.

11 MR. ALBERTI: Your Honor, can we be heard just really
12 briefly on that?

13 THE COURT: Yes.

14 MR. ALBERTI: With respect to images --

15 If we can take a look at our slide number 28.

16 In this passage -- and we are talking about column 26,
17 starting around line 30 -- it talks about what actually is
18 output with respect to images. And again when we are talking
19 about the output of images we are talking about output -- for
20 example, output might contain a header/footer on each page
21 indicating the identity of the authorized user. A watermark
22 might be printed in the background, or other identifying
23 material might be placed on each image.

24 So, it's talking in this context when you output an
25 image under this patent the actual thing that's doing this

E357INT1

1 outputting function and controlling how that output happens is
2 in fact the display, or the printer, at least in this example.

3 So, while it may be true that the IO controller
4 outputs some signals, we don't dispute that. At least --

5 THE COURT: I can understand that without a display or
6 some other form of register or printer that displays that which
7 has been output, the structure is incomplete. So, the
8 structure could be not only the controller but the display,
9 monitor or printer as well. I can adopt both.

10 MR. ALBERTI: We wouldn't have an objection to
11 adopting both, your Honor.

12 THE COURT: So, should I say an input/output
13 controller and associated display monitor or printer?

14 MR. ALBERTI: That's fine with us.

15 MR. ROBERTS: We can accept that.

16 THE COURT: We are on number 5. It would be the same
17 thing, wouldn't it, folks?

18 MR. ROBERTS: No.

19 THE COURT: The same structure?

20 MR. ROBERTS: No, it would not, your Honor.

21 So, first of all, the claims call for these things as
22 two different limitations. There is two different claims. One
23 has means for generating; one has means for outputting. It
24 uses different words. They should be different things.

25 THE COURT: So, what is the generator?

E357INT1

1 MR. ROBERTS: The problem is that it doesn't tell you.
2 If you look at figure 35, or slide 35, it could be the thing
3 that generates the signal that passes out through the IO
4 mechanism could be the processing unit; it could be the
5 nonvolatile memory or the encryption hardware. It could be a
6 variety of things that generate the signal that then pass out
7 via the IO controller. And it simply doesn't say which one of
8 those structures it is.

9 THE COURT: It could be all of it, couldn't it?

10 MR. ROBERTS: It could be all of them, that's
11 absolutely right. So our point about the lack corresponding
12 structure is that they haven't specified which one of these
13 boxes performs --

14 THE COURT: But it's implied, I think.

15 MR. ROBERTS: I think it's implied that it's
16 something, and the question is have they specifically called
17 out a structure as performing the function.

18 THE COURT: Well, on this diagram there is a single
19 line that passes into the box number 165.

20 MR. ROBERTS: That's right.

21 THE COURT: Can I just have a minute? And that line
22 shows leads from every one of the boxes on the right-hand side,
23 from which I would infer that the functions identified by each
24 and all the boxes, together with the controller, is the
25 generating impulse.

E357INT1

1 MR. ROBERTS: The problem with that, your Honor --

2 THE COURT: Let me see first if I got it right
3 according to Intellectual Ventures.

4 MR. ALBERTI: Your Honor, for this term we really
5 believe -- and if you take a look --

6 THE COURT: Just tell me if my concept is correct.

7 MR. ALBERTI: It should be limited to the IO
8 controller.

9 THE COURT: No, I don't believe so, because a
10 controller or a freostat is a governing body that limits
11 impulses coming into it in some fashion. So that which is
12 generated is not the controller; it's the origination of the
13 impulse together with the controller.

14 MR. ALBERTI: So if your Honor would restate what your
15 proposed structure was.

16 THE COURT: It's all the devices on the right-hand
17 side, right of box 165, everything that goes through 165.

18 MR. ALBERTI: I'd say with the exception of the disk
19 and the display, which I don't think have anything to do --
20 they're not generating the signals. I think I'm fine with
21 that.

22 THE COURT: The display and the disk and the printer
23 are all to the left of box 165.

24 MR. ALBERTI: There is one display, 164, which is in
25 the box 114, and I would suggest that the display is not

E357INT1

1 creating or generating the signal itself.

2 THE COURT: I don't know what function it has, nor do
3 I know what function the disk has, except to bring in
4 information from somewhere else, assuming the box for the
5 display is incomplete.

6 I can't tell you that I am familiar with the function
7 in each of these boxes that feeds into the controller.

8 MR. ALBERTI: At a minimum, your Honor, we would agree
9 that the processing unit and the memory would certainly be
10 devices that are used in any typical computer system to
11 generate signals which would subsequently be outputs by the IO
12 controller. If your Honor would like to include those
13 elements, we certainly would not object to that.

14 THE COURT: Well, you have agreed on the function, so
15 I should accept it. And as to the structure, I can't agree
16 with either of you, because it's not the controller, and there
17 is a corresponding structure, but it's not defined.

18 MR. ALBERTI: And, your Honor, again, I think you're
19 right, if you want to include some of these boxes, at least the
20 processing unit, and the volatile memory, and together with the
21 IO controller, we would be fine with that.

22 MR. ROBERTS: May I respond, your Honor, briefly?

23 THE COURT: Just a minute.

24 How about this: One or more devices inputting signals
25 into the IO controller and the IO controller.

E357INT1

1 MR. ROBERTS: Fine with us.

2 MR. ALBERTI: We're fine with that, your Honor.

3 THE COURT: I'm getting to understand this.

4 And there are next nine agreements on terms, which I
5 adopt. I'm sorry, there are 13.

6 Sorry. Going to number 9 of the agreement and the
7 structure. Should it be "a display monitor" rather than just
8 "a display"?

9 MR. ALBERTI: If you want to include "monitor," we're
10 fine with that, your Honor.

11 THE COURT: Because display is a verb. We need a
12 noun. A display monitor.

13 Number 10. I think "permissions" is better than
14 "rights".

15 MR. ROBERTS: That's fine with us, your Honor.

16 THE COURT: Number 11?

17 MR. ALBERTI: Your Honor, could we be heard on that
18 one?

19 THE COURT: On 10?

20 MR. ALBERTI: Yes.

21 THE COURT: You like rights better?

22 MR. ALBERTI: I like rights better.

23 THE COURT: It's going to be permissions.

24 MR. ALBERTI: That's fine.

25 THE COURT: Rights have a more mysterious connotation

E357INT1

1 to a jury. They understand permission. When they start with
2 rights, they think about law, and I don't think that's what we
3 want to suggest.

4 Similarly, in 11 I will take "permissions" over
5 "rules".

6 MR. ALBERTI: Well, your Honor, specifically with
7 respect to this one, because we used "rules" in the earlier
8 construction --

9 THE COURT: Then you're right, then it should be
10 "rules".

11 MR. ALBERTI: Yes.

12 THE COURT: And 12, I prefer the grammar "unencrypted
13 form of the protected portions of the data".

14 Well, that completes us through 11. Now we are ready
15 for the 574 patent.

16 MR. NAGY: If I can be heard briefly on that.

17 THE COURT: Which?

18 MR. NAGY: On the 574.

19 THE COURT: I was going to suggest a break.

20 MR. NAGY: Yes, your Honor. And in fact --

21 THE COURT: So, you will be heard after the break.

22 MR. NAGY: Oh, of course, your Honor. Sure.

23 (Recess)

24 THE COURT: OK, Mr. Nagy was going to tell us
25 something on the 574 patent.

E357INT1

1 MR. NAGY: Actually, your Honor, we resolved it.

2 THE COURT: All right. Let me tell you how I was
3 going to describe the patent.

4 "The patent covers a method of using trusted entities
5 to ensure that public or private keys are reliable and have not
6 been faked. Public or private key encryption (which is covered
7 by a separate patent) is used to encrypt data. A public key
8 matches a private key, and something encrypted by a public key
9 can be decrypted only by the private key and vice versa. This
10 patent makes sure that keys aren't faked by using a trusted
11 entity, which holds keys and issues certificates, to vouch for
12 keys.

13 "To transfer information from A to B: Computer A
14 which has private key A, sends a message to trusted entity; the
15 trusted entity then issues a certificate; the certificate is
16 encrypted with the trusted entity's private key; computers A
17 and B can verify the certificate using the trusted entity's
18 public key. With the certificate, the trusted entity gives
19 computer A, computer B's public key. Computer B can then
20 decrypt the data using its private key and verify that the
21 information comes from a trusted source by checking the
22 certificate. If computers A and B trust different entities,
23 then trusted entities can form a chain of verification, as long
24 as there is a common point of trust."

25 Having read what I wrote, I find it dense, and it will

E357INT1

1 need more work to explain this to the jury. I think it's
2 sufficient for our purposes here, but it needs more work to
3 explain it to the jury, and that doesn't need to be today's
4 session.

5 All right. So, we have --

6 MR. ROBERTS: Your Honor --

7 THE COURT: -- 17 terms in dispute.

8 MR. ROBERTS: If you wanted to distribute that to
9 opposing counsel and myself, we would be very happy to try to
10 work on it together to see if we can provide you with some
11 unified comments on it.

12 THE COURT: I accept that offer. Thank you.

13 I will just use that as a very brief point of comment.
14 It's my very strong view that jurors are up to understanding
15 the most complicated points of litigation including patents,
16 and that the problems that we all face are due to inadequacies
17 of lawyers, not to inadequacies of jurors.

18 It's the job of a lawyer to explain things in a way
19 that a layman can understand. I don't include the present
20 group of lawyers in that generalized description. But it's my
21 experience that whenever juries don't understand, whenever
22 judges don't understand, it's because the burden of explanation
23 has not been satisfied.

24 So, as the person who instructs the jury, it is my job
25 to have instructions that can be clearly understood and

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1 applied, and I would be grateful for your help in doing that.

2 All right. Did you want to say something more,
3 Mr. Nagy?

4 MR. NAGY: No, your Honor.

5 THE COURT: The first term in dispute is certification
6 infrastructure.

7 Intellectual Ventures says it's not required to
8 explain this.

9 JP Morgan suggests the following: "A set of processes
10 for performing certification. I think that's a good
11 interpretation, neutral and clear.

12 MR. ZOLOTOREV: Your Honor, may we be heard on that?

13 THE COURT: Of course.

14 MR. ZOLOTOREV: This is Jake Zolotorev.

15 If we can go to slide 11 in our presentation.

16 Your Honor, I'd like to make two points with respect
17 to this claim term and JP Morgan's proposed construction of it.
18 The first is that it takes what is clear and plain claim
19 language that we can see on the left-hand side and makes it
20 confusing instead of explaining it.

21 THE COURT: "Certification infrastructure" is too
22 dense a term, but I think you're making a good suggestion by
23 looking at the larger term, and I think I would say "arranged
24 in a set of processes by which verification is performed" -- or
25 "verification is achieved". So, I would define it as a set of

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1 processes by which verification is achieved.

2 MR. ZOLOTOREV: Your Honor, if I may address that.

3 THE COURT: Go ahead.

4 MR. ZOLOTOREV: The problem that we see here is
5 limiting the term infrastructure, which has a plain meaning
6 that is not limited to just processes. Of course, when we
7 think about infrastructure we think about hardware, software.
8 If it's transportation infrastructure, it's not just an act of
9 driving, it's also the roads and the cars, etc., etc.

10 THE COURT: So, would you like "a set of processes and
11 associated devices"?

12 MR. ZOLOTOREV: I think that would be a fairer
13 characterization of what infrastructure is.

14 MR. ROBERTS: Your Honor, they are very clear that it
15 is not directed to a set of hardware but is instead a set of
16 processes.

17 If I could have slide 6, please.

18 THE COURT: Leave that first slide up for a moment,
19 please.

20 System can comprehend both.

21 MR. ROBERTS: Yes. But, your Honor, it says, "in a
22 certification system for secure communications containing
23 computer processes arranged in an infrastructure". It says
24 right there that what we are talking about is a set of
25 processes arranged in an infrastructure.

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1 THE COURT: That was a redundancy, so let's work on
2 that. "In a certification system for secure communications
3 containing processes and devices by which verification is
4 achieved".

5 MR. ROBERTS: Your Honor, again the devices on which
6 these processes run are not a key component of what is claimed.

7 Indeed, if we could have slide 8, please.

8 THE COURT: I don't know what's key and what's not key
9 at this point. I'm intent on having these patent claims
10 understood by me and by the jury and have a common language for
11 both of us. I'm looking for inclusive language. I'm not
12 looking to give any side an advantage by this process.

13 MR. ROBERTS: Yes. And, your Honor, they are the ones
14 who are trying to read in hardware where it is very clear that
15 what is claimed is independent of the hardware.

16 This is from the specification. It's talking about a
17 set of functions, and those functions will act independently of
18 the type of hardware platform used.

19 If I could have slide 6, please.

20 Slide 6 talks about a set of processes which
21 collectively form the certification system, functions, and
22 infrastructure of the invention. The invention is directed to
23 a set of processes that are independent of any particular
24 hardware on which they may rely.

25 THE COURT: Infrastructure can comprehend hardware as

E357INT1

1 well as software.

2 MR. ROBERTS: Infrastructure can. In this case they
3 have said we are claiming a set of infrastructure composed of
4 software processes.

5 THE COURT: I don't go along with you. There has to
6 be devices in this.

7 MR. ROBERTS: Yes. But the question is are those
8 pieces of hardware part of the certification infrastructure, or
9 are they simply the devices upon which that infrastructure is
10 operated?

11 Software doesn't do anything without hardware, so
12 saying that it's a set of software processes doesn't exclude or
13 weed out the existence of hardware.

14 THE COURT: I think it does, so I'm going to one way
15 or another get devices in here.

16 I'm asked to define certification infrastructure, and
17 it will be defined as follows: "A set of processes and
18 associated devices by which verification is achieved".

19 MR. ZOLOTOREV: That is fine, your Honor.

20 MR. ROBERTS: Your Honor, the other problem with that
21 is by which there is verification, which is certification
22 includes more than merely verification. So, for example, claim
23 18 which is asserted here --

24 THE COURT: I think you're right.

25 MR. ROBERTS: -- talks about registration.

E357INT1

1 THE COURT: So should we say "by which certification
2 is achieved"?

3 MR. ROBERTS: Yes.

4 THE COURT: I think Intellectual Ventures can go along
5 with that, too.

6 MR. ZOLOTOREV: That is acceptable to us, your Honor.

7 THE COURT: Next claim is public key.

8 Intellectual Ventures feels that the words are self
9 descriptive. I disagree.

10 JP Morgan suggests: "A key that can be used to
11 encrypt data, or to decrypt data that has been encrypted by a
12 corresponding private key".

13 I will accept that.

14 MR. ZOLOTOREV: Your Honor, may we be heard?

15 THE COURT: Yes.

16 MR. ZOLOTOREV: I think after the briefing JP Morgan
17 suggested an alternative construction to what is here -- and
18 they can correct me if I got this wrong -- but it replaces the
19 "or" with an "and". So, instead of reading "a key that can be
20 used to encrypt data or decrypt data," it's "a key that can be
21 used to encrypt data and ..."

22 THE COURT: I will accept that.

23 MR. ZOLOTOREV: And we will accept it with an "and,"
24 your Honor.

25 THE COURT: Is there only one comma? The key that can

E357INT1

1 be used to encrypt data, comma? So everything else in that
2 definition qualifies decrypt data?

3 MR. ROBERTS: Yes.

4 THE COURT: Right, Mr. Zolotorev?

5 MR. ZOLOTOREV: Yes, in this construction, yes, your
6 Honor.

7 THE COURT: OK. Number 3. Public key certificate.

8 JP Morgan suggests: "A data structure binding a
9 user's identity to a public key".

10 I would suggest the following: "Information vouching
11 for the trustworthiness of a public key, including by
12 indicating that the public key was issued by the person who
13 claims to have issued it".

14 MR. ROBERTS: Can you read that again, your Honor?

15 THE COURT: "Information vouching for the
16 trustworthiness of a public key, including by indicating that
17 the public key was issued by the person who claims to have
18 issued it".

19 I need to take a few minutes. Sit in your places.

20 MR. ROBERTS: There are two small comments.

21 THE COURT: Mr. Roberts, I need to take a couple
22 minutes.

23 MR. ROBERTS: I apologize.

24 (Recess)

25 THE COURT: We were up to claim 4? Mr. Roberts.

E357INT1

1 MR. ROBERTS: Your Honor had proposed: "Information
2 vouching for a public key including by indicating" --

3 THE COURT: For the trustworthiness of a public key.

4 MR. ROBERTS: "Vouching for the trustworthiness" --

5 THE COURT: -- "of a public key, including by
6 indicating that the public key was issued by the person who
7 claims to have issued it".

8 MR. ROBERTS: So, your Honor, I have only two comments
9 on that. The first is that it can be issued not merely by a
10 person but by a computer process.

11 So, for example, you might have a computer process
12 that is issuing the key rather than a person. And I think,
13 therefore, it should say "was issued by the person or process
14 who claims to have issued it". So, for example, a website
15 might issue a public key. It need not be issued by a person.

16 And the other --

17 THE COURT: Why don't we say "by indicating that the
18 public key was issued" --

19 MR. ROBERTS: -- "by the entity"?

20 THE COURT: -- "by the appropriate issuer".

21 MR. ROBERTS: Very good. Or you could just say "by
22 the purported issuer".

23 And the other comment I had was --

24 THE COURT: I would rather use "appropriate" because
25 the jury might think "purported" is sinister.

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1 MR. ROBERTS: OK. And the other one you said is
2 "information". I don't have an objection to "information," but
3 it does seem to me that it might be better to say "a data
4 structure," because the information is somewhat -- if it's
5 something in a book, that's not a certificate. A certificate
6 is in fact an embodiment of that information in a form that can
7 be sent and received.

8 THE COURT: How about "a certificate vouching for the
9 trustworthiness"?

10 MR. ZOLOTOREV: Your Honor, we would agree with that.

11 MR. ROBERTS: The problem with certificate, just
12 repeating the word, is it doesn't give the jury any context for
13 what it is.

14 THE COURT: It does so.

15 MR. ROBERTS: OK.

16 THE COURT: I think they all know what a certificate
17 is. The question is what kind of certificate is it. What is a
18 public key certificate? A public key certificate is a
19 certificate that vouches for the trustworthiness, etc.

20 MR. ZOLOTOREV: Your Honor, may we be heard?

21 THE COURT: Yes.

22 MR. ZOLOTOREV: We agree with leaving in the
23 certificate as part of the construction. It's really the
24 latter part of the construction that we think may need a little
25 fine tuning. If we can go to slide --

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1 THE COURT: Let me do this. I understand your point,
2 Mr. Zolotorev. "By indicating that the public key was issued
3 by the issuer who was supposed to have issued it".

4 MR. ZOLOTOREV: I think that would be agreeable to us,
5 your Honor.

6 THE COURT: I will read the whole thing. "A
7 certificate that vouches for the trustworthiness of a public
8 key, including by indicating that the public key was issued by
9 the issuer who was supposed to have issued it".

10 Now, I want to know, gentlemen, why can't we stop at
11 public key? "A certificate that vouches for the
12 trustworthiness of a public key"?

13 MR. ROBERTS: Because, your Honor, you have to know
14 who issued it. It's not merely that the key itself is a
15 genuine public key but that it belongs to you. Because it is
16 the quality of being the public key that corresponds to your
17 private key uniquely that allows us to verify the authenticity
18 of the message.

19 THE COURT: All right. "A certificate that vouches
20 for the trustworthiness of a public key and the issuer who was
21 supposed to have issued that public key".

22 MR. ZOLOTOREV: Your Honor, I think again in the
23 interest of fine tuning the construction, the certificate is
24 not really vouching for the trustworthiness of the entity that
25 issued it; it's just vouching for the fact that the entity did

E357INT1

1 in fact issue the key.

2 THE COURT: All right, we'll leave it the way it was.
3 Thank you, folks.

4 Number 4. Data items required for a public key
5 certificate.

6 I think the term needs some definition.

7 JP Morgan suggests: "A public key and the user's
8 identity".

9 What claim number is this?

10 MR. ZOLOTOREV: Your Honor, this is for claim number
11 18.

12 THE COURT: Claim number 18.

13 MR. ROBERTS: Can you put up slide 19, which has the
14 claim for the court.

15 MR. NAGY: It's now on the screen, your Honor.

16 THE COURT: The problem is not the definitions of each
17 term but the whole, which is repetitive and solipsistic,
18 meaning it's turning on itself. So it reads "requesting a
19 computer process". That means that somebody is asking for a
20 verification. "Generating a data structure," which really
21 means responding. "In a response that" --

22 MR. ROBERTS: Your Honor, perhaps it would be helpful
23 just in explaining the structure of claim 18. What claim 18 is
24 calling for -- I think opposing counsel would agree with me --
25 is that this is the process by which certificates are issued,

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1 not the process by which certificates are used for
2 verification.

3 THE COURT: I understand that.

4 MR. ROBERTS: So, what we are talking about here in
5 step A is the computer that is requesting a certificate --
6 meaning I'm requesting a new certificate for myself -- it fills
7 out an application, and the data items required for a public
8 key certificate are the items that are required for the issuing
9 computer to issue a certificate, a new certificate or a
10 replacement certificate. So, that's the context in which this
11 is coming up.

12 THE COURT: You know, the introductory paragraph is
13 clear, but A and B defy understanding. And we are not helping
14 the process by breaking it down into its components; we are
15 only making it worse.

16 I don't think there is controversy here. I would ask
17 both of you to see if you can reword A and B so an ordinary
18 person can understand it.

19 MR. ROBERTS: Would you like us to try to do that now,
20 or do it offline and come back to you?

21 THE COURT: How about doing it at lunchtime?

22 MR. ROBERTS: Thank you.

23 THE COURT: And do the term as a whole; don't break it
24 down.

25 Subparagraph B says before you issue the certificate

E357INT1

1 you need to verify who is asking for it. It doesn't tell you
2 how to do that, does it?

3 MR. ROBERTS: No, your Honor, it doesn't say how to do
4 it. All we're saying is that what you are doing is you are
5 verifying who it's from, and that is necessary because the
6 purpose of the certificate is to, as we've said, bind the user
7 to a particular public key.

8 THE COURT: That's right. But, Mr. Zolotorev, is it
9 part of the patent to find out the authenticity of who is
10 asking?

11 MR. ZOLOTOREV: Your Honor, if I may --

12 THE COURT: Yes, you may. I'm asking you. You must.

13 MR. ZOLOTOREV: The claim talks about verifying the
14 authenticity of said request. The claim is not specific to
15 verifying the identity of who the request is from, which is
16 part of the reason that we were objecting to the original
17 construction that was being proposed by JP Morgan.

18 THE COURT: Well, part of authenticity is identity.

19 MR. ZOLOTOREV: It certainly is part of it, but
20 authenticity is broader than that. And if we look at the
21 specification of the patent, when it talks about what it means
22 to be authentic --

23 THE COURT: It's two things. It's identity and
24 authorization. You need to know who is asking.

25 MR. ZOLOTOREV: But, your Honor, even more

E357INT1

1 fundamental, your Honor, you need to know that the message
2 hasn't been tampered with. Authentic means untampered. You
3 also may want to know who is asking, but you need to know that
4 there has been no tampering.

5 If you read the specification, that's where the
6 specification begins and says we deal with the fact that
7 messages and keys themselves can be tampered with.

8 (Continued on next page)

E35MINT2

1 MR. ROBERTS: If it's been tampered with, it isn't
2 from the person it purports to be from.

3 THE COURT: It can be. You could have an proper
4 identity of source, but corruption on delay. Let's say, for
5 example, an authorized request or requests, but the silent
6 partner doesn't know.

7 MR. ROBERTS: If we could put up slide 25. That is
8 the graphic that the vendors used to describe the process and
9 the verifying the authenticity comes in box 910. And then
10 after you've authenticated.

11 THE COURT: Let me find box 910. That's a function.
12 It doesn't describe what you do. As I asked Mr. Zolotorev
13 before, is the authentication procedure part of the patent.

14 MR. ZOLOTOREV: If we could put up claim 18.

15 THE COURT: The answer first is yes or no.

16 MR. ZOLOTOREV: Your Honor, I just want to be clear
17 that we are talking about that the different claims talk about
18 different aspects of the process. So I would like us to be
19 focused on the invention upon a claim-by-claim basis as opposed
20 to me trying to make broad statements that could cover claims
21 and embodiments that are not at issue. Here, in claim 18, the
22 invention is -- part of step B, without a doubt, is verifying
23 the authenticity of said request. Now, can that involve
24 verifying who it's from? Sure.

25 As your Honor has just spoken about, there is even a

E35MINT2

1 more fundamental aspect of what verifying authenticity is, and
2 that is just making sure that in this case the request, the
3 request for the certificate, which is what we are talking about
4 in A, in B we are now going to verify the authenticity of that
5 request, make sure it's not tampered with.

6 THE COURT: Mr. Zolotorev, I've learned something.
7 I've learned that when you ask a question that can be answered
8 yes or no and the respondent answers neither yes or no, but
9 starts to give me an explanation, I get to wonder if there is a
10 yes or no answer. And if there is no yes or no answer, I get
11 to wonder if there is an obfuscation here that hides the fact
12 that there is no claim.

13 MR. ZOLOTOREV: Your Honor, I believe there is a clear
14 answer and that is the language of the claim.

15 THE COURT: The answer is yes or no.

16 MR. ZOLOTOREV: Verifying identity is not a necessary
17 step to claim 18. Verifying authenticity is.

18 THE COURT: It's not part of the patent. It's not
19 part of the claim.

20 MR. ZOLOTOREV: It is included in the claim, but
21 that's not all --

22 THE COURT: You verified, but it doesn't tell you how
23 to verify. We talked about an anomaly before, but we don't
24 have it here. With respect to verify, an anomaly detects that
25 some strange element has come in that you can't identify and

E35MINT2

1 would raise question which may go to the authenticity of the
2 impulse. But here there is nothing. Got it.

3 MR. ROBERTS: Your Honor, if they are concerned about
4 tampering --

5 THE COURT: This is the very issue of Nautilus and
6 Biogen, the case on which I was reversed and which the Supreme
7 Court granted certiorari. That invention dealt with the
8 spacing. You are probably familiar with the case more than I
9 am now. Nautilus claimed an invention in the spacing of
10 sensors in gym equipment. You go on a bike, for example, or a
11 treadmill and you want to know if your heartbeat has gone to
12 the appropriate level and not beyond. So you need a sensor.
13 And the sensors are in the handlebars. They could be someplace
14 else, but typically in the handlebars. But there is also a lot
15 of noise that's created by the motions of muscles and
16 contractions and expansion of muscles. So the trick is to
17 distinguish between the noise and the heartbeat. And Nautilus
18 claimed to have done that by the way the sensors for the
19 heartbeat were spaced. But they didn't describe what the
20 spacing was.

21 And I held that the patent was void for in
22 definiteness. The Court of Appeals reversed. It held that
23 trial and error -- I'm simplifying -- that trial and error by
24 someone skilled in the trade would have told them what the
25 spacing was or could be, and it was remanded back to me. And

E35MINT2

1 before any proceedings could follow from that, the Supreme
2 Court granted a writ of certiorari. There are other issues
3 described in the petition for cert., but basically, I think
4 that is a key here.

5 Here we have a situation where we are talking about
6 verification, but it's not described how the verification takes
7 place. If I act consistently with the way I see things under
8 Section 112 in the Nautilus and Biogen case, I probably would
9 be concerned about this issue of validity. That's beyond the
10 Markman. In the Markman my purpose is to define and define in
11 a neutral way so as to not advantage either side, but to be
12 accurate to the claims themselves. But here there is no
13 specification, it seems to me, how verification should be
14 accomplished.

15 MR. ZOLOTOREV: Your Honor, if I may be heard very
16 briefly on this point, there is a reason.

17 THE COURT: For purposes of my saying this is just to
18 excite those comments. You don't have to apologize for rising.
19 I want you to.

20 MR. ZOLOTOREV: There is a reason why JPMC hasn't
21 brought an indefiniteness issue to these terms.

22 THE COURT: Say that again.

23 MR. ZOLOTOREV: There is a reason, your Honor, why JP
24 Morgan Chase has not brought an indefiniteness challenge to any
25 of these terms.

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1 THE COURT: It's not time for it. They are waiting
2 for this proceeding.

3 MR. ZOLOTOREV: There is another reason for it. The
4 specification is very clear and provides embodiments and
5 specific details about what a sample certificate could be, how
6 one would go about verifying the authenticity. That is all
7 presented in the specification at a very, very low level of
8 detail, sometimes down to the actual commands, computer
9 commands.

10 THE COURT: You mean high level of detail.

11 MR. ZOLOTOREV: Both high and low. We go from concept
12 to actual algorithms. That is all in the specification. If I
13 can put up figure 3 of the patent, if that's possible.

14 Your Honor, figure 3, which you have on your screen
15 now, is an example of what a certificate could look like. And
16 it has various fields that are all described in the
17 specification. And if we go back to claim 18, remember, claim
18 18 talks about asking for a certificate, and generating to ask
19 for a certificate you basically fill out an application and the
20 term that we are actually trying to construe, your Honor, is
21 data items required for a public key certificate. And the
22 claim itself tells us that the one thing you got to have, you
23 need to have in that application is the public key that you are
24 going to be certifying and that is certainly one of the fields
25 in this embodiment. But here we can see why the patent

E35MINT2

1 talks --

2 THE COURT: Configured by a certain algorithm.

3 MR. ZOLOTOREV: Correct.

4 THE COURT: Which your system will recognize.

5 MR. ZOLOTOREV: Which the system will recognize and
6 read the fields.

7 THE COURT: By signature you don't necessarily mean a
8 manual signature. You need a certain algorithm.

9 MR. ZOLOTOREV: The patent describes that the process
10 of a signature would typically involve in description so this
11 is an automated process, obviously. A person wouldn't be able
12 to accomplish it.

13 THE COURT: My question to both of you is whether this
14 information should be incorporated in the definition of the
15 claim.

16 MR. ZOLOTOREV: We believe, your Honor, the claim
17 itself tells you the minimum needed information.

18 THE COURT: I don't think so. So I ask the question.

19 MR. ZOLOTOREV: Your Honor, if your Honor is concerned
20 that just the public key, providing the public key is not
21 enough --

22 THE COURT: In every patent description, any
23 advancement of a claim, there is attention to how much to
24 disclose. The more you disclose, the more the claim is bound
25 up with information, the narrower the claim and that gets in

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1 the way of patent infringement litigation. The more general
2 the claim, if it serves the function of validity, the more
3 general the potential for a patent infringement litigation.

4 So when I ask this question, how much of the
5 specifications should be incorporated into the definition, I'm
6 very much aware of the significance of my question. And I will
7 tell you my bias, which is in favor of description. So I would
8 want to include the specification language in the definition of
9 the claim because I think it's necessary for validity and it's
10 not my job to invalidate patents. It's my job to understand
11 the patent and to examine its validity in the context of the
12 full understanding and any relationship to prior art.

13 MR. ZOLOTOREV: Your Honor, if this is your Honor's
14 concern, I have a very specific suggestion for where to look in
15 the specification.

16 THE COURT: I want you to give me a definition of the
17 claim, not this minute, but I want a better definition of the
18 claim.

19 Mr. Roberts.

20 MR. ROBERTS: Yes, your Honor. This is exactly our
21 issue on this patent, which is, they have proposed plain and
22 ordinary meaning on everything and won't give us any
23 constructions.

24 THE COURT: Maybe they will think differently then.
25 Mr. Roberts, I understand. You notice that there are very few

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1 instances where I have accepted. I think you have an
2 understanding where I'm coming from.

3 MR. ZOLOTOREV: Your Honor, in fact, I can propose a
4 construction that I think addresses --

5 THE COURT: Do it at lunchtime. I want Mr. Roberts to
6 see it and think about it and put it to me.

7 MR. ZOLOTOREV: Very well, your Honor. Thank you.

8 THE COURT: You know what I want.

9 MR. ZOLOTOREV: Thank you, your Honor.

10 THE COURT: That takes us now to what number?

11 MR. ZOLOTOREV: Your Honor, the chart includes a
12 number 5, which is a certificate. The parties, in fact, have
13 agreed --

14 THE COURT: I said before that I am not interested so
15 much in the specific components of these phrases A and B. I
16 want a definition of the whole, not of the little pieces,
17 because I think I have to charge the whole for the jury and
18 it's not possible, in my opinion, to understand it, so I want a
19 better and clearer statement of A and B.

20 MR. ROBERTS: Your Honor, we will give you A.

21 THE COURT: I want you to work together.

22 MR. ROBERTS: We will work together on it. I would
23 submit, your Honor, that there are disputes about the meanings
24 of these individual components and ambiguities in them. For
25 example, when it says items required, are we talking about all

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1 of these items shown in the picture or just some?

2 THE COURT: Can you put up the language.

3 Go ahead, Mr. Roberts. Show me specifically.

4 MR. ROBERTS: Here: Data items required for a public
5 key certificate. What do they claim are those items? Is it
6 just going to float and as we go through the case they are
7 going to say it changes from day to day? We would like to know
8 what they are for both validity and infringement.

9 THE COURT: I think what Mr. Zolotorev says is that by
10 referring to that bar graph in the previous picture, in figure
11 3, those are the items.

12 MR. ROBERTS: If they were willing to say that each of
13 those items is required, we would agree and we would move on,
14 but they are not willing to say that.

15 MR. ZOLOTOREV: Your Honor, figure 3 shows one example
16 of a certificate. I believe we can work together and there is
17 a place in the specification.

18 THE COURT: No one wants to tie himself to an
19 exclusion. By saying only this, he leaves himself open because
20 there may be others. But I think it's sufficient to give a
21 very good example and this is a very good example. Figure 3 is
22 a very good example.

23 MR. ROBERTS: Your Honor, there is a difference
24 between saying what is the minimum, what is required and saying
25 there may be other things in addition.

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1 THE COURT: I have to work with the Second Circuit
2 tests all the time. The Second Circuit loves tests. Seven
3 tests, seven criteria and so on. But they always say, you
4 don't have to satisfy each one. You have to satisfy the tests.
5 But you can have some on your side, some on the other side.
6 You do an evaluation. Maybe that's what's needed. I don't
7 know. I have not thought about it because I have not seen it.

8 But I think Mr. Zolotorev has come up with something.
9 Are these all required? Is there some that's required? Is
10 there a human agency that makes an evaluation? If there is an
11 objective criteria, there is an algorithm that has to be
12 disclosed because that's the key. If it's subjective in some
13 fashion, that has to be disclosed. But I think Mr. Roberts is
14 entitled to know that.

15 MR. ROBERTS: Can we put up slide 24, please.

16 Your Honor, the way I suggest and the way we have
17 drawn our construction is to look at what the specification
18 says the purpose of this is. And it says: The certificate
19 authority vouches for the identity of the public key owner, for
20 the integrity of the public key itself, for the binding between
21 the public key and the owner's identity. That's where we get
22 that binding language from. And, optionally, for some
23 additional capabilities of the certificate owner in the
24 electronic environment. This guarantee is reflected in the
25 certificate.

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1 THE COURT: Where did you get this from?

2 MR. ROBERTS: This is from the specification at column
3 10, line 45 through 52. And it's the clearest statement that
4 there is. And we think that the certificate, therefore, at a
5 minimum, what's required is a public key and the user's
6 identity because it is going to vouch for those two things and
7 bind them together. It must have those two things. And that's
8 where we came up with our definition, which was the public key
9 and the user's identity.

10 THE COURT: I think it needs some discussion between
11 you. I think now you know how my understanding is, my
12 requirements are. You can look together to see if you can
13 satisfy it. Of course, you do what you think is important for
14 your own case. To the extent you can get together on this, it
15 would be useful.

16 MR. ROBERTS: As an efficiency point, your Honor,
17 since they have proposed plain and ordinary meaning for every
18 single term in this patent, might we suggest that we move on to
19 another patent and give them an opportunity to write down
20 constructions for all --

21 MR. NAGY: There are 14 more, your Honor. There are
22 17 in total and all of them are going to present this same
23 issue where IV --

24 THE COURT: Let me ask this. Put up the claim again.

25 MR. ROBERTS: Slide 23, for example.

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1 THE COURT: This is claim 18, A and B. Look at your
2 chart. Which claim term? What number claim term reflects 18A
3 and B? What number?

4 MR. ROBERTS: 18A and B are reflected in item number
5 4; item number 5, although that's agreed; item number 6.

6 THE COURT: They are consecutive.

7 MR. ROBERTS: Item number 7, although 7 appears --

8 THE COURT: Mr. Roberts, they are consecutive.

9 MR. ROBERTS: Yes. I don't have off the top of my
10 brain, your Honor --

11 THE COURT: I'll tell you. 3 through 7.

12 Mr. Zolotorev.

13 MR. ZOLOTOREV: I believe that's correct, your Honor.

14 THE COURT: We are down to 8. What claim number?

15 MR. ZOLOTOREV: 8. We agreed upon the construction of
16 8, your Honor.

17 THE COURT: Why don't you answer my question.

18 MR. ZOLOTOREV: 8 appears in the dependent claim.

19 Just a second to go forward here. The term is
20 application. The term is application, your Honor. It appears
21 in dependent claim 21.

22 THE COURT: You want to put that up. I don't
23 understand the term application.

24 MR. ROBERTS: Your Honor, I believe that we agreed
25 that it's a computer program, and I believe we did that just

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1 before the hearing today. We could argue and present data. If
2 they still stand by that agreement, then I think we are done.

3 THE COURT: Expiration of an existing certificate is
4 defined as after the expiration date in the certificate.

5 MR. ROBERTS: Yes, your Honor. This is just --

6 THE COURT: I assume that there is a date in the
7 certificate that caused it to expire at a certain time, or is
8 it a condition that causes expiration?

9 Mr. Zolotorev.

10 MR. ZOLOTOREV: Your Honor, there is no requirement.
11 That is our problem with the construction. There is no
12 requirement that there be a date in the certificate, but
13 certainly this is a timing issue.

14 THE COURT: You agree.

15 MR. ZOLOTOREV: We agree with JP Morgan Chase that
16 expiration of a certificate refers to a time. So a time
17 comes --

18 THE COURT: After the expiration date in the
19 certificate.

20 MR. ZOLOTOREV: What we disagree with, your Honor, is
21 that the construction offered by JP Morgan Chase referred to an
22 expiration date that has to be somewhere in the certificate
23 itself.

24 THE COURT: Show me the claim. The method of claim
25 18, performed upon expiration of an existing certificate, where

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1 the new certificate may contain either the existing or a new
2 public key.

3 It doesn't say date and it doesn't say where. How do
4 we find out what the expiration is?

5 MR. ZOLOTOREV: The expiration date may be in the
6 certificate. It may also be something that's kept --

7 THE COURT: I repeat my question. How do we find out
8 when the certificate expires?

9 MR. ZOLOTOREV: We either consult the certificate, if
10 it has the date on it, or we can consult third-party database
11 software, for example.

12 THE COURT: I need a definition. You are not defining
13 it. You are going to define it with Mr. Roberts.

14 MR. ZOLOTOREV: Thank you, your Honor.

15 THE COURT: Number 10. In common with.

16 MR. ROBERTS: Your Honor, we did propose a
17 construction.

18 THE COURT: Please don't boast about how good you are.

19 MR. ROBERTS: No, your Honor.

20 THE COURT: He says that the construction that he
21 suggested is not accurate. He is going to have to come up with
22 something else.

23 10. In common with. Let me see the claim.

24 MR. ZOLOTOREV: Can we put up slide 41, please.

25 THE COURT: I need the definition of in common with,

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1 unless it's also trusted by.

2 MR. ZOLOTOREV: I think we would be fine with also
3 trusted by.

4 THE COURT: Okay. Adopted.

5 Next, verifying the authenticity of signatures it.

6 MR. ZOLOTOREV: Slide 44, please.

7 THE COURT: Can you accept the JP Morgan suggestion?

8 MR. ZOLOTOREV: I don't believe that we can, your
9 Honor, just because it introduces terms that are not used in
10 the claim. So it introduces more complexity than the plain
11 language of the claim.

12 THE COURT: What's the method? How is the
13 verification to be acknowledged?

14 MR. ZOLOTOREV: The verification in this method is
15 accomplished it. Iteratively, meaning one by one. And that
16 may be what JP Morgan's construction is getting at. But it's
17 using terminology that is nowhere found in the claim.

18 THE COURT: It may be in the specifications. You use
19 a method of verifying. What is the method? If there is
20 nothing in the specifications of the patent, that means anybody
21 can figure out any method. How do you verify the signed data
22 structure.

23 MR. ZOLOTOREV: The specification.

24 THE COURT: Same point, Mr. Zolotorev. We don't need
25 to waste time. All these things require definition. If you

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1 want to save your patent, you are going to have to figure out
2 the specifications.

3 MR. ZOLOTOREV: We would be fine, your Honor, with
4 iteratively as being defined as one by one, which is what the
5 specification tells you to do.

6 MR. ROBERTS: That is absolutely not accurate.

7 THE COURT: Mr. Roberts, don't jump up so fast.
8 Iteratively is not sequentially. Iteratively connotes a
9 repetition, a series.

10 MR. ZOLOTOREV: Correct, your Honor.

11 THE COURT: What is the iterative quality that is
12 involved? Doesn't say one by one. It says there is a process
13 here. There is an intelligence embodied in a process. It's
14 got to be described in some fashion. You got specifications
15 that describe it?

16 MR. ZOLOTOREV: Yes, your Honor, we do.

17 THE COURT: Do it.

18 MR. ZOLOTOREV: We can start with --

19 THE COURT: This process is not only plain meaning of
20 terms. It's a process of ordinary and customary meanings as
21 understood by a person of ordinary skill in the art when read
22 in the context of specification and prosecution history. I
23 quote from *Thorner v. Sony Entertainment America, LLC*, 699 F.3d
24 1362 at page 1365 (Fed Cir. 2012) and many other cases like
25 that.

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1 My job here to make this intelligent, not by a bunch
2 of words, but by a meaningful exercise that is intelligible to
3 a jury. That's what we are going to do. That's the purpose of
4 this exercise. And you can't say interpretation and terms not
5 required. They are required. Let's incorporate what they
6 teach from the specifications so that people can understand
7 what the invention is.

8 MR. ROBERTS: Your Honor, can I show you what the
9 specification says?

10 THE COURT: No. That's for Mr. Zolotorev and you to
11 work out together.

12 MR. ZOLOTOREV: Okay, your Honor. We will.

13 THE COURT: It's now almost 12:45. I have to break
14 for lunch. I have a different suggestion. My suggestion is
15 that we break for the day. You've got a lot of work to do and
16 we have a session tomorrow starting at 11:00. If you want, I
17 can postpone that, too. But I think we will work with a great
18 deal more efficiency if you have more time together, now that
19 you understand my attitudes, with your colleagues whether or
20 not you want to address those attitudes.

21 MR. ZOLOTOREV: Certainly, your Honor. If I may
22 confer with my colleagues on the timing.

23 THE COURT: Sure.

24 MR. ZOLOTOREV: Your Honor, the suggestion from my
25 colleagues would be that perhaps we can address one of the

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1 shorter patents, like the '694 patent, today, where there is
2 only very few terms.

3 THE COURT: Let's come back at 2:15.

4 Mr. Nagy.

5 MR. NAGY: Your Honor, one point. You seem to want
6 constructions where it's now just plain ordinary for all of the
7 remaining terms. I just want to be sure that's right, so we
8 can come back to you where they have a proposal, we have a
9 proposal --

10 THE COURT: It's not important for me to repeat.

11 Lunch break. See you at 2:15.

12 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:15 p.m.

3 MR. ALBERTI: Your Honor, I would like to excuse my
4 colleague, Jake Zolotorev, so he can go back and work on those
5 '574 constructions. I wanted to make sure we didn't get back
6 to that patent today before I excuse him, since he is the most
7 qualified to speak to that.

8 THE COURT: I don't plan to.

9 MR. ZOLOTOREV: Thank you, your Honor.

10 THE COURT: What are we going to cover now?

11 MR. NAGY: Your Honor, the '694 patent, which has two
12 terms in dispute.

13 THE COURT: This patent covers a method for filtering
14 packets of information, based on the data contained in multiple
15 packets. A packet of information typically has two components:
16 The header, which contains information about the destination
17 and source, and the payload, which contains the data.
18 Frequently data is spread over several packets. The patent
19 filters packets based on the data contained in the payload of
20 multiple patents. Again, I have got to work on this.

21 And there are two items in dispute.

22 The term packet, according to Intellectual Ventures,
23 is defined as a discrete unit of structured information defined
24 by a network communications protocol. JP Morgan defines it as
25 a discrete unit of information, suggests a discrete unit of

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1 information being routed through a computer network.

2 MR. NAGY: Your Honor, we have no problem with that.

3 THE COURT: What's Intellectual Ventures' position?

4 MR. ALBERTI: Your Honor, there is two issues that we
5 have with that. The first is that a packet does, in fact, have
6 structure according to the '694 patent. In particular, within
7 the claim itself it indicates some of that structure, which is
8 at least a header that includes certain parameters and a
9 payload. And one of the parameters would be a parameter
10 identifying protocol.

11 THE COURT: How would you define it?

12 MR. ALBERTI: I would define it as a discrete unit of
13 structured information --

14 THE COURT: Structured because there is no
15 information. It's just a big word which doesn't mean anything.

16 MR. ALBERTI: A discrete unit of information routed
17 through a computer network defined by a network protocol.

18 MR. NAGY: Your Honor, may I respond to that?

19 THE COURT: Yes.

20 MR. NAGY: The problem with that, your Honor, is the
21 patent is clear that that additional limitation is not part of
22 what a packet is.

23 THE COURT: I agree.

24 MR. NAGY: Thank you, your Honor.

25 THE COURT: What about adding to a specific

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1 destination or to a designated destination or to a designated
2 addressee?

3 MR. NAGY: Your Honor, we have got an objection there
4 and the problem with that, this patent is about filtering
5 packets. One of the types of packets you might want to filter
6 are, for example, malformed packets. They are going to where
7 they are not supposed to be going and there is no need for a
8 packet to have a specified destination. The specification
9 actually tells us that. It says a packet might have a header,
10 but it might not. It might have a payload. It might not. It
11 doesn't have to have a destination and it really goes to the
12 point of the invention in the sense that you might have a
13 malformed packet, exactly what you want to exclude. We don't
14 need to do more, Judge, than what we've done.

15 MR. ALBERTI: Your Honor, I would disagree with that.

16 THE COURT: Adding the word often. A discrete unit of
17 information being routed through a computer network often to a
18 designated addressee.

19 MR. ALBERTI: I'm fine with that.

20 MR. NAGY: Just one second, your Honor. I want to
21 make sure I have your construction right.

22 THE COURT: A discrete unit of information being
23 routed through a computer network often to a designated
24 addressee.

25 MR. NAGY: Can we move often, your Honor, to before

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1 being. Often being routed through a computer network.

2 The reason we think we ought to qualify it that way, a
3 packet doesn't always have to be routed through a computer
4 network. It could be within a single computer, it could be at
5 rest and it would still be a packet if it were at rest. We
6 don't want to suggest that a packet is not a packet unless it's
7 being routed.

8 THE COURT: The purpose of having it as a packet is to
9 be routed.

10 MR. NAGY: That's right, your Honor.

11 THE COURT: Okay. Done.

12 Second, a combination of the contents of the packet
13 received in step A and the contents of at least one other
14 packet. JP Morgan doesn't offer anything else.

15 Intellectual Ventures.

16 Let me suggest what I think. A combination of the
17 contents of the payload of the packet received in step A,
18 identified in step A, and the contents of the payload of at
19 least one other packet. I'll read it again.

20 A combination of the contents of the payload of the
21 patent identified in step A and the contents of the payload of
22 at least one other packet.

23 MR. ALBERTI: Intellectual Ventures agrees with that,
24 your Honor.

25 MR. NAGY: Your Honor, we disagree.

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1 Can I have slide 28, please.

2 Judge, the reason we disagree is, this particular
3 construction, it's the only one of the 38 constructions you
4 have, is not really a construction. It's a request to correct
5 what IV claims was a mistake made by the examiner. However,
6 Judge, when you look at history here, the examiner simply did
7 not make this mistake. And what we are showing you here to try
8 to capture this is just one example.

9 THE COURT: How would you change the definition?

10 MR. NAGY: I would change the definition, your Honor,
11 by not altering the claim language in the second part of it.
12 So you should not say in the second step. The contents of the
13 payload. It should simply be what it is now. The contents of
14 other packets. Intellectual Ventures doesn't contend that
15 contents of the packet actually means contents of the payload.
16 We are in agreement that a packet and a payload are different
17 things.

18 THE COURT: I think the definition, focusing on
19 payload, is better because it's not the header that's being
20 prepared.

21 MR. NAGY: Your Honor, if I may, if you look at slide
22 28, this examiner actually rejected as anticipated by prior art
23 the construction that you're about to give. If you take a look
24 at IV's construction, they say payload, payload. We say
25 payload --

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1 THE COURT: Why do you care? If this is anticipated
2 by prior art, you have a motion.

3 MR. NAGY: We do have a motion, your Honor.

4 THE COURT: Why do you care?

5 MR. NAGY: We care, your Honor, because the
6 construction is wrong and we think there are a number of issues
7 implicated by this. The examiner looked at a claim. There
8 were 26 claims originally submitted. He said claim 26 does
9 exactly what you are saying, payload payload.

10 Go back. We will show you the claim 26.

11 THE COURT: What's the difference between contents and
12 payload?

13 MR. NAGY: Contents is broader, your Honor.

14 THE COURT: Why?

15 MR. NAGY: For example, if this is a packet with a
16 header in a payload, it includes the header. It is not limited
17 to the payload. There is no ambiguity here, your Honor.

18 THE COURT: Can you not answer until I ask. Both of
19 you, keep quiet.

20 In my introduction I have defined a packet typically
21 having two components, the header and a payload. Does it have
22 other components?

23 MR. NAGY: It might, your Honor.

24 THE COURT: For example.

25 MR. NAGY: For example, it could have something called

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1 a footer or it might have another field, depending on what kind
2 of packet it is. And the examiner was clear. You are not
3 being asked to change this. You are not being asked to define
4 contents of the packet because they actually believe a packet
5 means a payload. They say the examiner made a mistake. He
6 could not have made a mistake, your Honor. He repeatedly
7 addressed this language. And he found that a claim that was
8 proposed, claim 26, that was payload payload, payload of the
9 packet identified in step A and payload of other packets, he
10 rejected that.

11 And I raise that just to make clear that there wasn't
12 a mistake by this examiner. Therefore, you ought to not
13 redraft this claim. That's the issue. Should you redraft it,
14 we don't think you should, your Honor, because it's clear, he
15 didn't make a mistake. Might we challenge this as invalid?
16 Sure. That's not a reason, however, to redraft the claim.

17 THE COURT: Would you put up on the board the claim.

18 MR. NAGY: We have the claim in slide 9, please.

19 THE COURT: I think I would accept the proposition of
20 JP Morgan not to have an interpretation.

21 MR. NAGY: Thank you, your Honor.

22 MR. ALBERTI: Your Honor, I would like to be heard on
23 that. If we take a look at the claim, the language of the
24 claim is right in front of us. And this was discussed at
25 length in the tutorial and your Honor correctly noted at that

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1 time what this patent deals with is the looking at multiple
2 payloads. That, in fact, is what distinguishes this patent
3 from the prior art. And if you go step by step, you'll see
4 that the selecting step, which is step B, recites: Selecting
5 an access rule based upon the contents of the payload received
6 in step A.

7 And when we take a look at what was added to the
8 implementing step, which is step C, the additional language
9 that was added was the, wherein the access rule is selected
10 based on a combination of the contents of the packet received
11 in step A. The word the contents refers back to the contents
12 contained here in step B, which is the contents of the payload
13 and the contents of at least one other packet.

14 THE COURT: It says step A.

15 MR. ALBERTI: Correct. But the selecting rule in step
16 B is very clear, that selecting is based on the contents of the
17 payload of the packet. When you see the contents in this
18 claim, the only time that word is used is to refer to the
19 contents of the packet payload.

20 THE COURT: You have to have similarity between both
21 parts of the phrase. These phrases are in apposition. They
22 are intended to have similar connotations. So the words used
23 should be the same. If it says the contents of the packet
24 received in step A, it should say the contents of at least one
25 other packet. If payload is introduced into the first part,

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1 payload should be introduced into the second part. If it's
2 not, it should not. That's my ruling.

3 I go by JP Morgan that an interpretation is not
4 required.

5 MR. NAGY: Your Honor, as a housekeeping matter, we
6 have two patents left. You had proposed finishing tomorrow --

7 THE COURT: Let me finish this one.

8 MR. NAGY: Apologize. We are finished.

9 THE COURT: I have the agreed terms.

10 MR. NAGY: That's right, your Honor.

11 THE COURT: What's the reason for the underline in the
12 claim terms selecting an access rule?

13 MR. NAGY: Your Honor, it's simply to delineate which
14 corresponds to which in the agreed construction. If it's
15 confusing, your Honor, we just don't need it. You can omit it
16 in both parts.

17 THE COURT: I adopt the agreements.

18 So we are not involving ourselves in the '574 patent
19 and the '666 patent.

20 MR. ADAMO: Your Honor, good afternoon. We are ready
21 to proceed on '666 right now or if your Honor chooses or it
22 will be easier for the Court, we can come back tomorrow
23 morning. I don't think it's going --

24 THE COURT: Let's go ahead. Let's do as much as we
25 can.

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1 MR. ADAMO: Very good. Thank you, sir.

2 THE COURT: I introduce it as follows: This patent
3 covers the crypto-engine, a processor which is dedicated to
4 encryption or decryption. The crypto-engine can use two
5 protocols for encrypting or decrypting data: RSA, which bases
6 computations on the multiplication of large prime numbers and
7 ECC, which bases computations on an elliptic curve. Both
8 protocols use modular multiplication.

9 We are going to have to do better on this because
10 these are terms that the jury may not be familiar with.

11 There are three items in dispute. There are actually
12 seven items in dispute. First one is multiplication unit.

13 There is a difference because JP Morgan wants to add
14 the word solely, which is not in the claim, so I would like to
15 define it as a unit capable of performing multiplication, which
16 is the suggestion of Intellectual Ventures.

17 MR. ADAMO: Your Honor, if the Court recalls, when we
18 were here during the tutorial, counsel for IV agreed with using
19 the language and your Honor quoted Mr. Lim's statement. I'm at
20 record page 114, line 19 to record page 115, line 4 when I
21 said: In particular, the modular multiplication unit is
22 capable of doing one thing and only one thing. It can't do
23 anything other than multiply. Your Honor then said: I think
24 Mr. Lim said that it's dedicated to multiplication. I said
25 yes. And not just dedicated to it, it's incapable of doing

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1 anything else. And you said: Same thing. And similarly --

2 THE COURT: You would be happy if I say unit dedicated
3 to performing multiplication.

4 MR. ADAMO: I would, sir. That would be fine.

5 THE COURT: Who is responding?

6 MR. LIM: I am, your Honor.

7 If I may refer your Honor --

8 THE COURT: Tell me whether you go along with what I
9 said.

10 MR. LIM: We would like to have a unit capable of
11 performing multiplication. The units are not dedicated or
12 solely. Neither of those terms appear in the claim,
13 specification or the prosecution history.

14 THE COURT: Put up the claim, please.

15 How do you distinguish the multiplication unit from
16 the addition unit?

17 MR. LIM: By the fact that the multiplication unit is
18 capable of performing multiplication and the addition unit is
19 capable of performing addition, your Honor. The function that
20 it's capable of performing delineates the three units.

21 THE COURT: I don't think I need to add solely. Go
22 with Intellectual Ventures.

23 MR. ADAMO: Your Honor, during the prosecution of this
24 patent -- could I have slide 8, please -- there was a rejection
25 over the Stujanic reference, I believe is the right way to

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1 pronounce it.

2 THE COURT: I can end this. How about defining a unit
3 that performs multiplication?

4 MR. ADAMO: That definition leaves the term open to,
5 it could also perform addition.

6 THE COURT: But it's not being defined that way. And
7 if you want to do it, you can do it. It's a unit that performs
8 multiplication. That's the way it's going. Unit that performs
9 multiplication. The addition unit is a unit that performs
10 addition.

11 MR. ADAMO: Same comment for the same reasons, your
12 Honor. I understand the Court's ruling.

13 THE COURT: Overruled.

14 Third, sign inversion unit. What's sign inversion,
15 Mr. Lim?

16 MR. LIM: Your Honor, it's the same issue. As you can
17 see --

18 THE COURT: What is sign inversion?

19 MR. LIM: Simply inverts a sign of a number, your
20 Honor.

21 THE COURT: Sign or cosign, you mean.

22 MR. LIM: Positive number to negative number, negative
23 number to positive number. Inverting the sign of the number.

24 THE COURT: How about say a unit that changes positive
25 numbers into negative numbers and negative numbers into

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1 positive numbers?

2 MR. LIM: We are okay with that.

3 MR. ADAMO: That's acceptable to JP Morgan Chase.

4 THE COURT: That's acceptable to Mr. Adamo.

5 Fourth claim in dispute is output. I don't think it
6 need to be defined.

7 MR. LIM: Agreed, your Honor.

8 MR. ADAMO: Your Honor, are you just not going to then
9 instruct the jury as to any meaning of the word output?

10 THE COURT: I have to instruct the jury as to the
11 whole claim, right?

12 MR. ADAMO: Yes.

13 THE COURT: That's a word in the claim. They know
14 what output is.

15 MR. ADAMO: Understood.

16 THE COURT: It's the antonym of input.

17 MR. ADAMO: Your Honor, just for a moment can I have
18 slide 5, please.

19 Your Honor, the reason that we think a definition of
20 output would be important in the context of figure 2 of the
21 patent, which is shown on this slide 5, would be to make it
22 clear that the lines that say temp data that your Honor can
23 see, that's what the output is that the claim is talking about
24 that speaks -- look at either claim 1 or claim 4. It talks
25 about the outputs of the multiplication unit, of the addition

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1 unit, and the sign inversion unit. So the outputs are the temp
2 data items that are shown coming out of the modular
3 multiplication unit 15.

4 THE COURT: It's either an output or an input if it's
5 moving. We don't need it.

6 MR. ADAMO: Understood, your Honor.

7 THE COURT: Next one is feedback. I don't think we
8 need anything here.

9 MR. LIM: Agreed, your Honor.

10 MR. ADAMO: Your Honor is just, again, going to read
11 the claim with the term feedback.

12 THE COURT: Correct.

13 MR. ADAMO: In context, sir.

14 THE COURT: Correct.

15 MR. ADAMO: Understood.

16 THE COURT: Next is host processor. What is the
17 claim?

18 Mr. Lim, in your own words, what do you mean by host
19 processor?

20 MR. LIM: Your Honor, host processor, the spec
21 provided that plain ordinary meaning of what a host processor
22 is.

23 Can I have slide --

24 THE COURT: Can you just talk to me.

25 MR. LIM: I'm sorry.

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1 THE COURT: Person to person. I'm on the street. We
2 are having drinks.

3 MR. LIM: A host processor --

4 THE COURT: I heard this term host processor. What
5 does host processor mean?

6 MR. LIM: The central processor that is running this
7 main computer.

8 THE COURT: Why can't we say that?

9 MR. LIM: I'm sorry. Maybe I'm a little nervous.
10 Yes, that's what it is.

11 THE COURT: Mr. Adamo, how do you define the host
12 processor? We are having drinks. I ask you a question. I use
13 the phrase host processor. What do you mean?

14 MR. ADAMO: Host processor is the processor that runs
15 the computer at a slower speed than the processor that's
16 located in the crypto-engine.

17 THE COURT: I don't know what you're talking about.

18 MR. ADAMO: Slower. It goes 10 miles an hour, your
19 Honor, while the processor in the claim crypto-engine goes 50
20 miles an hour.

21 THE COURT: Why should a host be slow?

22 MR. ADAMO: That's the way it's defined and it's used
23 in the context of the alleged invention here. One of the three
24 main characteristics of the alleged invention is that the
25 processor and the crypto-card works ways faster than the host

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1 processor.

2 THE COURT: So what.

3 MR. ADAMO: That's what the claimed invention's
4 alleged benefits are.

5 THE COURT: Show me.

6 MR. ADAMO: Your Honor, if you would look at both
7 column 1.

8 THE COURT: Sit down, Mr. Lim. You're ahead.

9 MR. ADAMO: In the summary of the invention section,
10 there is a reference at column 1, line 33 to asymmetric
11 cryptographic processing, column 1.

12 THE COURT: Let's look.

13 MR. ADAMO: Column 1, lines 30 through 36, summary of
14 the invention. It's the second line we can see there, your
15 Honor. Hardware-based crypto-engine for asymmetric
16 cryptographic processing. That means we have got two different
17 speeds at least involved in the cryptographic processing. And
18 then if your Honor at column --

19 THE COURT: Could be anything. Asymmetric could be
20 anything.

21 MR. ADAMO: Your Honor, besides the language in claim
22 4, if your Honor would also look at column 2, starting at line
23 51.

24 THE COURT: Mr. Lim, write down what you told me so
25 you don't forget.

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1 MR. ADAMO: You'll see number 3.

2 The asynchronous executing of the hardware modules in
3 much higher speed than the processor communicating with it,
4 heterogeneous processing. In English that means that the
5 cryptographic engine processor is running at a much higher
6 speed than the processor it's talking to. That's the host
7 processor. That's what that means in plain English. And
8 that's because the RSA and the ECC require the computation of
9 huge amounts of numbers.

10 THE COURT: I rule that these are perhaps useful in
11 the description of functions, but it's not an essential part of
12 the definition. It would only complicate and confuse things.

13 So a host processor is, Mr. Lim?

14 MR. LIM: It is a processor that runs the main
15 computer, central processing unit that runs the main computer.

16 THE COURT: Central processor that runs --

17 MR. LIM: The main computer.

18 MR. ADAMO: Understood, your Honor. My objection --

19 THE COURT: Is overruled.

20 Central processor that runs the main computer. You
21 can't say main computer. Main means, in effect, host. How
22 about the other computers?

23 MR. LIM: The computer system.

24 THE COURT: Runs the computer system.

25 MR. LIM: Yes.

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1 THE COURT: A central processor that runs the computer
2 system.

3 MR. ADAMO: Your Honor, with respect, there is no
4 support for these terms in the specification in any location
5 and it's inconsistent with the prosecution as well.

6 THE COURT: Hosts suggests something central on which
7 others focus. We are talking about a computer system and we
8 are talking about the processors in the computer system. I
9 think it does. Overruled.

10 7. Op-code signal.

11 MR. ADAMO: The claim would be the best place, your
12 Honor.

13 THE COURT: A cryptographic controller generates
14 status and interrupt signals for the host processor and
15 generating an op-code signal for the arithmetic unit, the
16 arithmetic unit selecting RSA or ECC mode of operation based on
17 the op-code signal.

18 Op-code is gibberish. Does it mean operation code?

19 MR. LIM: Yes.

20 MR. ADAMO: Might I suggest this.

21 THE COURT: Op-code will be defined as an operation
22 code.

23 MR. ADAMO: Which does not mean anything to the jury.
24 If we just say operation code, they are not going to get the
25 sense of what the claim calls out.

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1 May I propose this, your Honor: A signal capable of
2 indicating an RSA operation when it has a first value and an
3 ECC value when it has another value. That's the point. Zero
4 means it's running RSA. It should run RSA. 1 means it should
5 run ECC. That's what the claim is saying that the operation
6 code signal is.

7 THE COURT: Do you go along with that, Mr. Lim?

8 MR. LIM: We only have one minor objection to that.
9 The word value.

10 THE COURT: Why don't you and Mr. Adamo talk off the
11 record and see if you come up --

12 MR. ADAMO: I had suggested signal instead of value.

13 THE COURT: Sit down with each other off the record
14 and persuade each other.

15 (Discussion off the record)

16 MR. ADAMO: Your Honor, we had an agreement. Should I
17 dictate it to the Court?

18 THE COURT: Yes.

19 MR. ADAMO: A signal capable of indicating an RSA
20 operation when it has a first characteristic and an ECC
21 operation when it has a different characteristic.

22 MR. LIM: Yes, your Honor.

23 MR. ADAMO: Do you have it, your Honor?

24 THE COURT: A signal capable of indicating an RSA
25 operation when it has one characteristic.

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1 MR. ADAMO: When it has a first characteristic, your
2 Honor.

3 THE COURT: When it has one characteristic. And ECC
4 operation when it has a different characteristic. How will you
5 tell the jury what RSA and ECC is?

6 MR. LIM: That's in the specification. If I can have
7 column 1, line 9 and 10. That defines what that is. I am not
8 sure if those words are better for the jury.

9 THE COURT: Let me see them.

10 MR. ADAMO: We are looking at the claim.

11 MR. LIM: We are looking at what RSA and ECC stand
12 for.

13 We can simply say that RSA and ECC are two modes of
14 cryptography or two protocols for cryptography.

15 MR. ADAMO: I have a two-word add that will do the
16 same thing. A signal capable of indicating an RSA encryption
17 operation when it has one characteristic and an ECC encryption
18 operation when it has a different --

19 THE COURT: I think we will do better separating them.
20 I'll add: RSA and ECC are two modes or protocols for
21 encryption.

22 MR. LIM: Protocols. Encryption protocols is what
23 that spec says right there.

24 THE COURT: Are two protocols for encryption.

25 MR. ADAMO: Could I hear it again with the Court's

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1 last addition.

2 THE COURT: A signal capable of indicating an RSA
3 operation when it has one characteristic and an ECC operation
4 when it has a different characteristic. RSA and ECC are two
5 protocols for encryption.

6 MR. ADAMO: Thank you, your Honor.

7 THE COURT: Here is what we will do. We will e-mail
8 to each of you tomorrow this document I've created which will
9 have the claim term and my proposed construction. In the claim
10 term I want reference to the line number in the claim. I will
11 leave out each of your proposals. I will include the
12 agreements. I will ask you to review what I have. And if you
13 feel that for reasons other than I've accepted or rejected
14 today there are other things to comment on, you can add those
15 comments. I also appreciate if you would look at a little
16 introduction I have of the law, overview of introductions to
17 each of the patents and see if they make sense; if not, to
18 suggest changes.

19 And with regard to the two patents where we didn't do
20 anything, I'll just repeat the information that we have here
21 and leave my construction out. To the extent that you can
22 agree, please do so. If it's subject to an objection to what I
23 said is my guides, you will make those objections so you have a
24 clear record. I propose that we cancel tomorrow so you have
25 time to work together and we will convene at 10:30 Monday.

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1 MR. ADAMO: I believe there is only one patent left,
2 your Honor. I think it's '574. We just did '666.

3 THE COURT: We did '666. Yes, sir.

4 MR. LIM: Your Honor, may I propose a suggestion. To
5 the extent that the parties are able to work out the
6 differences on the '574 tonight, would your Honor be willing to
7 have a short hearing tomorrow afternoon --

8 THE COURT: Let's cancel tomorrow. You have got a lot
9 to do. In other words, you are thinking that we can do it
10 tomorrow afternoon rather than come back on Monday? I'm open
11 to that. 2:30. I'll reserve it. And if you want it, both of
12 you, or not want it -- Mr. Lim, you call. I only need to know
13 your separate positions. If you both agree for tomorrow, it's
14 on. If you can't both agree, we will do it Monday at 10:30.

15 MR. LIM: Thank you, your Honor.

16 THE COURT: I also want to discuss with you what
17 should be our next step. I would like you, respectively, to
18 suggest where we go. We can do that on Monday or tomorrow, or
19 I can schedule another day, because you may want to think about
20 what you want to do and talk together and discuss with your
21 clients. You needn't tell me now. You needn't tell me now.
22 You can tell me when we are together. You can say, Judge,
23 let's go on to the next stage, or, Judge, let's schedule a date
24 for the next stage.

25 MR. NAGY: Your Honor, I was going to suggest that we

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1 take it up tomorrow or Monday.

2 THE COURT: I'm open to either way. But there are
3 things that I'm doing that you may not have anticipated. It
4 doesn't need to be a lot of time. I can meet with you, for
5 example, next Friday.

6 MR. NAGY: I think if we are able, perhaps, we can do
7 it tomorrow, or perhaps next Friday.

8 THE COURT: Either way.

9 MR. LIM: Thank you, your Honor.

10 THE COURT: We are recessed. Thank you very much.

11 (Adjourned to Thursday, March 6, 2014, at 2:30 p.m.)
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